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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,471	08/09/2001	Theodore Davidov	BHT-3143-3	2649

7590 11/27/2002

DOUGHERTY & TROXELL
SUITE 1404
5205 LEESBURG PIKE
FALLS CHURCH, VA 22041

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,471

Applicant(s)

DAVIDOV ET AL.

Examiner

Robin Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 23 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s) _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The corrected or substitute drawings were received on September 23, 2002. These drawings are approved by the examiner.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1,2,4,7-9,11,14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Heidorn (DE 200 00 079).

The eating utensil 1 is considered a "one-piece" eating utensil. Wherein the open phrase "comprising" is used in the claims, the presence of a secondary portion is not precluded from the disclosed structure of Heidorn.

Claim Rejections - 35 USC § 103

4. Claims 5,6,12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidorn in view of Torniainen et al. (US 6,371,324).

Heidorn teaches the claimed lid except for the eating utensil being a fork or a knife.

Torniainen teaches a lid having a detachable eating utensil wherein the utensil can be a spoon as seen in figure 1 or can be a fork, spork, or knife as described in col. 5, lines 40-42.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn. Doing so provides alternative utensils as appropriate for the food contained within the associated container.

5. Claims 1,2,4,7,8,9,11,14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidorn in view of Schoenmakers (WO 95/07847).

Art Unit: 3727

Wherein it can be argued Heidorn does not teach a one-piece eating utensil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate the secondary handle extension 2 and form a one-piece eating utensil as taught by Schoenmakers. Doing so would have been an obvious matter of design choice to save on manufacturing costs, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

6. Claims 5,6,12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 9 above, and further in view of Torniainen.

Heidorn as modified by Scheonmakers teaches the claimed lid except the eating utensil being a fork or a knife.

Torniainen teaches a lid having a detachable eating utensil wherein the utensil can be a spoon as seen in figure 1 or can be a fork, spork, or knife as described in col. 5, lines 40-42.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn. Doing so provides alternative utensils as appropriate for the food contained within the associated container.

Response to Arguments

7. Applicant's arguments with respect to claims 1,2,4-9, and 11-15 have been considered but are moot in view of the new grounds of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3727

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

10. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

Art Unit: 3727


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 8:30 a.m. to 1:30 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
November 20, 2002


Robin A. Hylton
Patent Examiner
GAU 3727